TABLE OF CONTENTS

PAGE

ARGUMENT:

Point 1—The decision of the Supreme Court of New Jersey in this case does not establish law which in any way frustrates or interferes with the Congressional legislation cited by Petitioners and no question is presented under the Supremacy Clause, U.S.C.A., Article 6, Clause 2, requiring review by this Court 2

Point 2—The decision of the New Jersey Supreme Court sanctioning the total prohibition of Mobile Home Parks from a municipality does not deny Petitioners any right protected by the 14th Amendment of the Constitution of the United States 16

CONCLUSION 31

Cases Cited

Andrews v. Board of Adjustment of Ocean Township, 30 N. J. 245; 152 A. 2d 580 (1959)..... 25

California v. Zook, 336 U. S. 725, 731; 93 L. Ed. 1005; 69 S. Ct. 341..... 15

DeSimone v. Greater Englewood Housing Corp., No. 1, 56 N. J. 428; 276 A. 2d 31 (1970)..... 26, 30

Duffcon Concrete Products, Inc. v. Borough of Cresskill, 1 N. J. 509; 64 A. 2d 347 (1949)..... 11

Fanale v. Borough of Hasbrouck Heights, 26 N. J. 320, 325; 139 A. 2d 749 (1958)..... 11, 12, 30

PAGE

Fischer v. Township of Bedminster, 11 N. J. 194; 93 A. 2d 378 (1952) 11

Gibbons v. Ogden, 9 Wheat. 1; 6 L. Ed. 23 (1824) 14

Head v. New Mexico Board of Examiners in Optometry, 374 U. S. 434; 83 S. Ct. 1759; 10 L. Ed. 983 (1963) 15

Heines v. Davidowitz, 312 U. S. 52, 67; 61 S. Ct. 399, 404; 85 L. Ed. 581 (1941) 14

James v. Valtierra, 402 U. S. 137; 91 S. Ct. 1331; 28 L. Ed. 2d 678 (1971) 4

J. D. Const. v. Board of Adjustment, Twp. of Freehold, 119 N. J. Super. 140; 290 A. 2d 46 (Law Div. 1972) 30

Kelly v. Washington, 302 U. S. 1, 10-13; 82 L. Ed. 10, 12; 58 S. Ct. 87 15

Kozesnik v. Township of Montgomery, 24 N. J. 154, 167; 131 A. 2d 1 (1957) 10

Lionshead Lakes, Inc. v. Township of Wayne, 10 N. J. 165, 173; 89 A. 2d 693 (1952) Appeal dismissed, 344 U. S. 919; 97 L. Ed. 708 (1953) 10, 11

Nectow v. City of Cambridge, 277 U. S. 183; 72 L. Ed. 842; 48 S. Ct. 447 (1928) 22, 23, 27, 28, 31

Oakwood at Madison, Inc. v. Twp. of Madison, 117 N. J. Super. 11; 283 A. 2d 353 (Law Div. 1971) 30

Perez v. Campbell, 402 U. S. 637; 91 S. Ct. 1704; 29 L. Ed. 2d 233 (1971) 2, 14

Pierro v. Baxendale, 20 N. J. 17; 118 A. 2d 401 (1955) 11

Schmidt v. Bd. of Adj. City of Newark, 9 N. J. 405; 88 A. 2d 607 (1952) 12

PAGE

Schoelppie v. Woodbridge Twp., 60 N. J. Super. 146, 150; 158 A. 2d 338 (App. Div. 1960) 26

Skaf v. Zoning Bd. of Adj. of Asbury Park, 35 N. J. Super. 215, 222; 113 A. 2d 843 (App. Div. 1955) 25, 26

Southern Burl. Cty. N.A.A.C.P. v. Twp. Mt. Laurel, 119 N. J. Super. 164; 290 A. 2d 465 (Law Div. 1972) 30

Vickers v. Tp. Comm. of Gloucester Tp., 37 N. J. 232; 181 A. 2d 129 (1962) appeal dismissed Cert. den. 371 U. S. 233; 83 S. Ct. 326; 9 L. Ed. 2d 495 (1963) rev'd 68 N. J. Super. 263; 172 A. 2d 218 (App. Div. 1961) 9-13, 26-28, 30

Village of Euclid, Ohio v. Ambler Realty Co., 272 U. S. 365; 47 S. Ct. 104 (1926) 4, 7, 9, 20-23, 27-31

United States Constitution Cited

Article 6, Clause 2 2

Fourteenth Amendment, Section 1 ..... 16, 18, 27, 28

New Jersey Constitution Cited

N. J. Const. 1844, Art. IV, Sec. VI, Par. 5 7

N. J. Const. 1947, Art. IV, Sec. VI, Par. 2 ..... 7, 12

Statutes Cited

Housing and Urban Development Act of 1969, as amended: 83 Stat. 379; Public Law 91-309 ..... 3, 4

Housing Act of 1937 5

National Housing Act of 1954, as amended: Section 701 5

PAGE

New Jersey Statutes:

N.J.S.A. § 40:55-30, et seq.; L. 1928, c. 274, § 3, p. 696; later amended L. 1948, ch. 305 § 1, p. 1221 ..... 2, 7, 8, 12, 13, 29

N.J.S.A. § 40:55-31 ..... 8, 9, 12, 13

N.J.S.A. § 40:55-32 ..... 8-10, 12, 13, 24

N.J.S.A. § 40:55-33 9

N.J.S.A. § 40:55-36 to 45 23

N.J.S.A. § 40:55-39 24

N.J.S.A. § 40:55-39(d) 25

N.J.S.A. § 40:55-48 13

12 U.S.C.A.:

Sec. 1701, G-3 4

Veterans' Housing Act of 1970, as amended: 84 Stat. 1108; Public Law 9-506 ..... 3, 4, 14

Rule Cited

Rule 24.1 1

Other Authorities Cited

42 ALR 3rd 598 (1972) 27

Cunningham, "Control of Land use in New Jersey", 14 Rutgers Law Review 37, 38 (1959) 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-907

OSCAR YEAGER and ANNA C. YEAGER,

Petitioners,

v.

TOWNSHIP OF MANSFIELD, WARREN COUNTY, NEW JERSEY, a municipal corporation, TOWNSHIP COMMITTEE OF MANSFIELD, and the BOARD OF ADJUSTMENT of the TOWNSHIP OF MANSFIELD,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION

To the Honorable Chief Justice and the Justices of the United States Supreme Court:

Pursuant to the provisions of Rule 24.1 of this Court the Respondents file this Brief in opposition to Petitioners' application for the issuance of a Writ of Certiorari to the Supreme Court of New Jersey.

ARGUMENT

I

The decision of the Supreme Court of New Jersey in this case does not establish law which in any way frustrates or interferes with the Congressional legistion cited by Petitioners and no question is presented under the Supremacy Clause, U.S.C.A. Article 6. Cl. 2, requiring review by this Court.

While failing to make specific reference to the New Jersey Zoning enabling legislation (N.J.S.A. 40:55-30 et seq.) and the ordinance of the respondent, Township of Mansfield, it is assumed that these are the two pieces of State legislation as construed by the New Jersey Court; which petitioners allege undermine and frustrate the intent of Congress as expressed thru the three passages quoted by Petitioners in Appendix D of their Petition.

In the language of Mr. Justice White expressing the majority opinion of this Court in the recent case of *Perez* v. *Campbell,* 402 U. S. 637, 91 S. Ct. 1704 (1971); deciding whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict. Mere parallel undertakings by the federal and state legislatures working in their respective ways to achieve common goals, or legislation by one tending to complement or assist in the implementation of the other is not offensive to the constitutional requirement that the Acts of Congress made in pursuance of the constitution shall be the supreme law of the Land.

There can be no doubt in anyone's mind that the nature, design and purpose of the Veterans Housing Act of 1970, as amended by Public Law 91-506 and approved October 23, 1970 has as one of its primary objectives the encouragement and facilitation of private residential construction and rehabilitation and that as part of this program the Congress expanded the insurance provisions of the law to encourage loans to qualified veterans who desire to build, purchase, or rehabilitate residences for themselves and their families, and that mobile homes are recognized as eligible for such insurance, subject to certain conditions and restrictions spelled out in the Act and in the regulations promulgated thereunder by the Administration.

The same characterization is warranted in summarizing the intent and purpose of the Housing and Urban Development Act of 1969, as amended by Public Law 91-809, approved December 31, 1970, except that the insurance provided in this plan is available to others as well as veterans. In both statutory programs there is a requirement that the borrower use the mobile home as his principal residence. Both plans provide for insurance of the loan to acquire not only the mobile home itself but also an approved site upon which it is to be located. The amount of insurance available varies in each case dependent upon the site cost and the number of modules of which the mobile home is composed.[1]

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[1] While prohibiting commercial Mobile Home Parks, the Mansfield Township Zoning Ordinance does not prohibit the erection and use of mobile homes *per se* which in many cases are essentially portable prefabricated homes on individual lots in any residential zone, so long as such lots meet the minimum physical dimensions

(Footnote continued on following page)

Nowhere in the congressional statutory language cited by the petitioners, nor in the context of either the Veterans Housing Act, or the Housing and Urban Development Act, is there a manifestation of Congressional intent to enter into the legislative regulation of local land uses, or in any way to interfere with or supersede the local zoning regulations which traditionally have been recognized as of particular concern, and the province of, the local communities involved. This court as well as the federal and state courts has consistently refrained from interfering with the judgment of the local authorities in zoning matters except in the most extreme cases and under the most extreme circumstances. This attitude goes back at least as far as the landmark decision of this court in *Village of Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 47 S. Ct. 104.

The late Mr. Justice Black in *James* v. *Valtierra*, 402 U. S. 137, a case concerned with a contention that a California statute which conditioned the approval of public housing projects in that State upon the approval of the electorate in a referendum conducted in the community wherein it was proposed the Supremacy clause was con-

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(Footnote continued from preceding page)

prescribed in the zone, and the mobile homes meet the minimum floor area and other physical standards which the ordinance requires for conventional homes in such zone. Sec. 12 U.S.C.A. 1701 G-3 provides: "Wherever the words 'prefabricated houses' are used they shall be constructed to include houses which are of a mobile or portable character." Naturally, such mobile home dwellings are required to meet the minimum standards of the Building Code and must be provided with potable water and an approved sanitary waste disposal system as in all residential cases. This appeal concerns the ordinance provision which currently excludes Mobile Home Parks.

travened, said "By the Housing Act of 1937, the Federal Government has offered aid to state and local governments for the creation of low cost public housing. However, the federal legislation does not purport to require that local governments accept this or to outlaw local referendums on whether this aid should be accepted." The California law was sustained as constitutional.

Certainly the Congress in its varied legislative programs to aid and encourage the alleviation of housing shortages the rehabilitation of deteriorated housing facilities, and to otherwise solve housing problems across the land, has always been mindful of the benefits of zoning and it has been content not only to permit all of its housing and land development programs to function within the framework of local zoning regulations, but even chose to assist local governments in small communities to undertake the preparation of comprehensive master plans and their implementation by land subdivision controls and zoning ordinances. The very ordinance here being challenged was prepared by Mansfield Township officers with the assistance of planning consultants and other professional personnel paid with funds provided by the Federal Government. Mansfield Township, along with more than 170 New Jersey municipalities participated in this program which was administered by the Division of Regional Planning in the New Jersey Department of Conservation and Economic Development. This Federal Aid program which provided up to seventy-five percent of the cost of development of local municipal Master Plans and Zoning ordinances to provide for land development and use regulation, was administered through the Federal Housing and House Finance Administrator, the funds being allocated by the Urban Renewal Administration, pursuant to Section 701 of the National Housing Act of 1954 as amended. This congressional measure to aid and encourage local

planning and zoning was known nationally as "The 701 Local Planning Assistance Program". There was no actual participation in the professional part of the program by any Federal agency nor was any Federal review or approval required before the zoning ordinances and other local measures implementing the Master Plan were adopted and placed in local operation. Development of the whole program was left to the states and to the municipalities.

Petitioners suggest that because the Congress has provided through the insurance of mortgages an encouragement to banks and lending institutions to grant loans for the purchase of mobile homes, it has also mandated that Mobile Home Parks be permitted in every municipality of the United States without regard to local conditions or problems bearing upon the matter. They do not suggest what degree of such use would satisfy the claimed congressional mandate. Should there be one Mobile Home Park per municipality? One for each square mile? One for each 10,000 of population? How many spaces must be provided for a Mobile Home Park to qualify? How large should such spaces be? Will ten spaces do, or must there be twenty or fifty or perhaps one hundred? If only one park per municipality is required would not Petitioners' present non-conforming Park discharge Mansfield Township from its alleged obligation? Of course, Congress never intended to regulate and mandate the acceptance of this type of residential classification by any municipality, any more than it mandates the local acceptance of all of the other forms of residential, commercial, industrial, agricultural, educational, hospital, health care or other buildings and uses (to mention a few) for the construction, maintenance and/or operation of which the Congress also provides financial assistance.

Following the sanctioning of zoning by the United States Supreme Court in *Euclid*, supra (1926), New Jersey, along with many other states, began to build a sound base for its zoning program. By an amendment of the 1844 Constitution of the State of New Jersey (N. J. Const. 1844, Art. IV, Sec. VI, Par. 5) which became effective October 28, 1927, the language and authorization of which amendment was carried into the 1944 Constitution (N.J. Const. 1947, Art. IV, Sec. VI, Par. 2), the state-wide electorate approved zoning as a permitted exercise of the State's police power. The Legislature of New Jersey at first by L. 1928, C. 274, Sec. 3, and by later amendment, L. 1948, Ch. 305, Sec. 1 effective August 9, 1948 enacted enabling legislation providing:

> "Any municipality may by ordinance limit and restrict to specified districts and may regulate therein, buildings and structures according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority, subject to the provisions of this article, shall be deemed to be within the police power of the State. Such ordinances shall be adopted by the governing body of such municipality, as hereinafter provided, except in cities having a board of public works, and in such cities shall be adopted by such board.
>
> The authority confirmed by this article shall include the right to regulate and restrict the height, number of stories, and sizes of buildings, and other structures, the percentage of lot that may be occupied, the sizes of yards, courts, and other open spaces, the density of population and the location and use and extent of use of buildings and structures and land for trade, industry, residence or

other purposes." N.J.S.A. 40:55-30, as amended L. 1948, C. 305, p. 1221, Sec. 1 effective August 9, 1948.

"For any or all of said purposes, the governing body or board of public works may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this article, and it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings or other structures, and the nature and extent of the uses of land within such district.

All such regulations shall be uniform for each class or kind of buildings or other structures or uses of land throughout each district, but the regulations in one district may differ from those in other districts." N.J.S.A. 40:55-31, as amended L. 1948, C. 305, p. 1221, Sec. 2 effective August 9, 1948.

"Such regulations shall be in accordance with a comprehensive plan and designed for one or more of the following purposes: to lessen congestion in the streets; secure safety from fire, flood, panic and other dangers; promote health, morals, or the general welfare; provide adequate light and air; prevent the overcrowding of land or buildings; avoid undue concentration of population. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of property and encouraging the most appropriate use of land throughout the municipality." N.J.S.A. 40:55-32 as amended L. 1964, C. 150 Sec. 1.

Then follow various provisions with respect to the procedure to be followed in the development of the regulations, public hearings, notice, the adoption of the ordinance, and provisions regarding the creation, composition, powers and duties of the Board of Adjustment, and various other guidelines, to assure the fair and reasonable application of the regulations and restrictions and to provide relief therefrom in specified circumstances. N.J.S.A. 40:55-33 et seq.

Thus it is seen that the fundamental purpose and intent of zoning as well as the basic guidelines for the adoption and administration of zoning regulations, are clearly stated in both the New Jersey Constitution and the above cited enabling acts. The New Jersey Courts have stated and restated the clear language of the foregoing quoted passages of the New Jersey Constitution and the Zoning Enabling Statute. Having referred to the standards therein set out, following the guidelines set forth in *Euclid,* supra, they proceed to determine whether or not the matter presented has respected the guidelines therein established. As was said by Mr. Justice Proctor speaking for the Supreme Court of New Jersey in the important case of *Vickers* v. *Township Committee of Gloucester Township,* 37 N. J. 233, appeal dismissed and certiorari denied 371 U. S. 233 (1963):

> "In N.J.S.A. 40:55-30 and N.J.S.A. 40:55-31, the legislature has given municipalities extensive power to create districts and regulate structures and the use of land therein through zoning ordinances. The guiding purpose in exercising this power is set forth in N.J.S.A. 40:55-32 [and he quotes the passage as set out *supra.*] (Bracketed language supplied)
>
> "The role of the judiciary in reviewing zoning ordinances adopted pursuant to the statutory grant

> of power is narrow. The court cannot pass upon the wisdom or unwisdom of an ordinance, but may act only if the presumption in favor of validity of the ordinance is overcome by an affirmative showing that it is unreasonable or arbitrary. *Kozesnik* v. *Township of Montgomery,* 24 NJ 154, 167 (1957). See Cunningham 'Control of Land Use in New Jersey' 14 Rutgers Law Review 37, 48 (1959). By these standards which control judicial review, the plaintiff to prevail must show beyond debate that the Township in adopting the challenged amendments (an amendment precluding Mobile Home Parks in any part of the Township) transgressed the standards of N.J.S.A. 40:55-32. In other words, if the amendment presented a debatable issue we cannot nullify the Township's decision that its welfare would be advanced by the action it took."

He goes on:

> "It cannot be said that every municipality must provide for every use within its borders. Fanale v. Borough of Hasbrouck Heights, 26 N. J. 320, 325 (1958). The fact that a municipality is largely underdeveloped does not impose a contrary obligation. Sound planning and zoning look beyond the present into what lies ahead in the hopes of the planners. It requires as much official watchfulness to anticipate and prevent suburban blight as it does to eradicate city slums." *Lionshead Lakes, Inc.* v. *Township of Wayne,* 10 N. J. 165, 173 (1952), appeal dismissed, 344 U. S. 919, 97 L. Ed. 708 (1953).

Vickers, supra, sustained an ordinance which completely precluded Mobile Homes Park from a large undeveloped

Township. The Supreme Court of New Jersey, in the instant case denied petitioners' application for certiorari to review the decision of the Appellate Division of the New Jersey Superior Court, set forth in Appendix B of Petitioners' Petition, which expressly followed *Vickers*. Other cases in which the New Jersey Court sustained municipal ordinances enacted pursuant to the above cited Zoning Enabling Act, which totally excluded certain uses were: *Duffcan Concrete Products, Inc.* v. *Borough of Cresskill*, 1 N. J. 509 (1949) (Ordinance totally excluding heavy industry); *Lionshead Lakes, Inc.* v. *Township of Wayne*, *supra* (ordinance barring anywhere in the Township any residence having less than 768 square feet of living area); *Fischer* v. *Township of Bedminster*, 11 N. J. 194 (1952) (an ordinance placing most of the Town in a residence zone with a minimum lot size of five acres for each residence); *Pierro* v. *Baxendale*, 20 N. J. 17 (1955) (an ordinance barring motels from the entire Township); *Fanale* v. *Borough of Hasbrouck Heights*, *supra* (an ordinance prohibiting apartment houses of any kind anywhere in the Borough).

In *Vickers*, *supra* (P. 246) the New Jersey Supreme Court notes that:

> "Trailer camps, because of their particular nature and relation to the public health, safety, morals and general welfare, present a municipality with a host of problems, and these problems persist wherever such camps are located. . . . In *Fanale* we said at page 325: 'Apartment houses are not inherently benign. On the contrary, they present problems of congestion and may have a deleterious impact upon other uses.' This description is equally applicable to trailer camps. Clearly trailer camps bring problems of congestion with all their difficulties."

> "And if the Township is to avoid the 'deleterious impact which one use may have upon other uses and encourage the most appropriate use of land throughout such municipality' it must be concerned with the future as well as the present values of property. Our recent decisions have uniformly held, in conformance with the constitutional provisions and the zoning statutes hereinbefore cited [N. J. Cons. Art. IV Sec. VI par. 2 and N.J.S.A. 40:55-30, 31 and 32] that 'general welfare' should be given a broad interpretation. . . . If the zoning ordinance is reasonably calculated to advance the community as a social, economic and political unit, it furthers the general welfare and therefore is a proper exercise of the zoning power. *Schmidt* v. *Board of Adjustment of the City of Newark,* 9 N. J. 405 (1952)." (Bracketed data supplied by counsel.)

In another place in the *Vickers* opinion, Justice Proctor said:

> "Since trailer camps are not permitted in the other districts, the effect of the amending ordinance prohibiting them in the industrial district is to bar them from the entire municipality. There are no trailer camps in the Township at present. Plaintiff contends that total prohibition is illegal. However, we have held that a municipality need not provide a place for every use. *Fanale* v. *Borough of Hasbrouck Heights* (26 N. J. 320, 325 (1958)). We do not think that a municipality must open its borders to a use which it reasonably believes should be excluded as repugnant to its planning scheme. It must be remembered that once a use is legally established even though conditions

> impel a revision of the zoning ordinance and the use strikes a jarring note, it cannot be eliminated by such revision under existing law. N.J.S.A. 40:55-48. If through foresight a municipality is able to anticipate the adverse effects of particular uses and if resulting actions are reasonable, it should be permitted to develop without the burdens of such uses."

It is submitted that the Mansfield Township Committee in the exercise of its legislative judgment and discretion enacted a Master Plan and Zoning ordinance which it believes will promote the health, morals and general welfare of its community and that its ordiances, as found by our New Jersey Courts, which reviewed and weighed its factual content and local conditions, is a valid exercise of the police power and constitutionally valid.

Our New Jersey Supreme Court, then, in action as late as its consideration of the instant case, has adopted the statement of purpose set out in the above-cited section of the New Jersey Constitution and the above quoted passages of the Zoning Statute (N.J.S.A. 40:55-30, 31, and 32) and has reiterated the interpretation thereof in terms of the policy stated in *Vickers, supra.* The New Jersey legislation dealing with Zoning has nothing to do with the purchase of Mobile Homes by veterans or anyone else. On the facts of this case, the New Jersey Supreme Court sustained the Mansfield Township ordinance under attack, adopted in 1964 by the Respondent Township Committee of the Township of Mansfield, in strict compliance with every procedural requirement of the New Jersey Zoning Enabling Act (N.J.S.A. 40:55-30 et seq.), as a valid and constitutional exercise of the Police Power of the State and Municipality, and in particular, sustained

the constitutionality of the total exclusion of Mobile Home Parks from the Township of Mansfield by the terms of such zoning ordinance.

Having thus ascertained the nature, intent and purpose of the respective Federal and State legislation, the Petitioners allege to be in conflict and thus violation of the supremacy Clause, we must next determine whether the provision of the Mansfield Township Zoning Ordinance excluding Mobile Home Parks as a permitted use from all parts of the Township conflicts with the provisions of the portions of the Veterans Housing Act of 1970 as amended, *supra* and the Housing and Uniform Development Act of 1969 as amended, *supra,* to such a degree that, as Chief Justice Marshall stated in *Gibbons* v. *Ogden,* 9 Wheat 1, 6 L. Ed. 23 (1824), it so *interferes with* or is *contrary to* such congressional acts, made in pursuance of the constitution; that it is invalid under the supremacy clause.

Mr. Justice Black, in *Heines* v. *Davidowitz,* 312 U. S. 52, 67, 61 Sup. Ct. 399, 404, 85 L ed 581 (1941) as quoted by Mr. Justice White in *Perez, supra* P. 1704, reviewing precedents, wrote "This Court, in considering the validity of state laws in the light of treaties or federal laws touching the same subject, had made use of the following expressions: conflicting; contrary to; occupying the field, repugnance; differences; irreconcilability, inconsistency, violation, and interference . . . in the last analysis, our function is to determine whether a challenged state statute stands as an obstacle to the accomplishment and execution of the full purposes and objectiveness of Congress.

Said Mr. Justice White in *Perez, supra,* p. 1711:

> "Since *Heines* the Court has frequently adhered to this articulation of the meaning of the supremacy

> clause. (citing numerous cases). . . . Indeed, in *Florida Lime and Avocado Growers, Inc.* v. *Paul,* 373 U. S. 132, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963) a recent case in which the court was closely divided, all nine Justices accepted the Heines test."

As was said in an opinion by Mr. Justice Stewart in *Head* v. *New Mexico Board of Examiners in Optometry,* 374 U. S. 424, 83 S. Ct. 1759, 10 L. Ed. 2d 983 (1963), a case dealing with an alleged violation of the supremacy clause by a New Mexico statute regulating advertising by optometrists as in contravention of the Federal Communications Act and the regulations of its Commission governing radio broadcasting:

> "Statements concerning the exclusive jurisdiction of Congress beg the only controversial question: Whether Congress intended to make its jurisdiction exclusive. *California* v. *Zook,* 336 U. S. 725, 731, 93 L. Ed. 1005, 69 S. Ct. 341. *Kelly* v. *Washington,* 302 U. S. 1, 10-1382 L. Ed. 10, 12, 58 S. Ct. 87. 'In areas of the law not inherently requiring national uniformity, our decisions are clear in requiring that state statutes, otherwise valid, must be upheld unless there is found such actual conflict between the two schemes of regulation that both cannot stand in the same area, or evidence of a congressional design to preempt the field.' *Florida Lime and Avocado Growers, Inc.* v. *Paul, supra,* 373 U. S. 132, 141."

In the absence of positive evidence of clear legislative intent to the contrary, it is incredible that Congress in the legislation cited by petitioners, has ousted the State and local municipal governing bodies from an area of

such fundamentally local concern as zoning. Surely the legislative exclusion of Mobile Home Parks by the zoning of one small rural municipality in the exercise of its legislative judgment in a manner consistent with the statutory policy governing zoning in New Jersey, for local reasons, determined to be valid and constitutional by the Supreme Court of New Jersey, as within the police power of the municipality, cannot be determined as a frustration of the federal legislation cited by Petitioners.

II

The decision of the New Jersey Supreme Court sanctioning the total prohibition of Mobile Home Parks from a municipality, does not deny Petitioners any right protected by the 14th Amendment of the Constitution of the United States.

Petitioners in their petition (Page 8) complain that the decision of the New Jersey Supreme Court and the Mansfield Township Zoning Ordinance, if sustained, prohibit legitimate business use of Mobile Home Parks under the guise of zoning regulation in a residential zone. This position recognizes that the petitioners' operation of a Mobile Home Park is a business use, as distinguished from a conventional residential use in a residential zone. Petitioners contention on the merits that the denial of its request for a permit to expand its mobile home park was unreasonable and arbitrary, and that there were "special reasons" for granting the variance, were heard and considered by the Mansfield Township Board of Adjustment on two separate hearings. The appeal was denied. The same contention was presented to the Superior Court of New Jersey at a plenary trial at which the same is-

sues of fact were presented for review. Again the appeal was denied and the refusal of the Board to grant the variance was sustained. On appeal by Petitioners, the Appellate Division of the New Jersey Superior Court again reviewed the facts, received briefs and heard arguments. The appeal was denied and the validity of the zoning ordinance and the action of the Board of Adjustment in denying the requested variance was again sustained. The New Jersey Supreme Court after consideration of the facts and the law, denied certiorari. The factual questions dealing with the nature of the community, its needs, the petitioners' circumstances, and the reasonableness of the ordinance in the Mansfield Township context were all resolved against the petitioners and in favor of the respondents.

Petitioners in their statement of the case assert that a portion of their lands measuring 1,200 feet by approximately 400 feet, "was originally projected for use as a Mobile Home Park." The Board of Adjustment and the New Jersey Superior Court found as a fact that Petitioners had used a parcel only about one-third of that area as a Mobile Home Park and that they had improved that smaller area to provide 28 spaces. There was a finding that Petitioners *had not* done anything to improve or otherwise prepare the additional area into which they desired to expand the operation by creating an additional 41 trailer spaces, and that the legal non-conforming use which Petitioners had a right to continue using *did not include the additional area* or the right to develop and use the 41 additional spaces. In Superior Court Judge Collins' opinion—Appendix C, pp. 5a-18a inc. Petition. Plainly petitioners factual contention that they had a non-conforming use as to the expansion area for the 41 extra trailer spaces was adjudicated against them.

There is no non-conforming use. The issue before this court is whether the provision of the Mansfield Township Zoning Ordinance by prohibiting the conduct and operation of the business of Mobile Home Parks within its borders denies the petitioners any rights protected under the due process and equal protection clauses of Amendment XIV, Section 1, of the Constitution. U.S.C.A. Constitution Amend. 14, Section 1.

It cannot be gainsaid that the Due Process and Equal Protection Clauses of the Fourteenth Amendment of our Constitution stand as two great legal ramparts in the protection and defense of the private rights of our citizenry against the government restraints imposed to fulfill the ever increasing needs of the public. But the guaranty of the Fourteenth Amendment is freedom from *arbitrary restraint*, not immunity from reasonable regulations imposed in the interest of the community as a whole. The Constitution does not recognize absolute and uncontrolled individual liberty. The liberty safeguarded is liberty within social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Constitutional liberty is necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted and enforced in the interest of the community consistent with current requirements in the exercise of the police power is due process!

The police power of government did not have its genesis in our written Constitution. It is an inherent and indispensable element or governmental sovereignty to be empowered to order the affairs of state so as to serve the common essential needs of the people. The principle is certainly established beyond question in our American jurisprudence, that incidental restriction of limitation of

private freedoms and property rights ensuing from governmental action in a proper sphere, reasonably and uniformly invoked for the public good, is not a denial of freedom or a deprivation of property without due process of law or the taking of private property for public use without compensation.

Community planning in the implementation of which zoning is an integral and essential tool, involves systematic development to serve common interests in matters that from earliest times have been deemed to be within the range of the police power to resort to the adoption and enforcement of reasonable standards and restrictions in the development, improvement and use of land in aiding the building and expansion of community life as may reasonably be appropriate to fulfill the essential common material and moral needs as the same are manifested from time to time.

We are constantly surrounded with the problems of growth. Planless growth with its resultant haphazard development and its baneful consequences are everywhere apparent. There are current evils affecting the health, safety and welfare of our citizenry which are all but insurmountable because of the prohibitive cost of rehabilitation. The benefits brought by programs of thoughtful municipal planning are apparent in those areas where they have been instituted and consistently followed. Those communities near the metropolitan areas which, although in the direct and immediate path of the urban population explosion, still enjoy a fairly rural and relatively undeveloped character, like the respondent Mansfield Township, are exactly the municipalities wherein comprehensive planning and zoning, consistently and firmly administered and enforced at the beginning and throughout the early stages of the rapid growth which is imminent,

and which will quickly establish the pattern which the development will follow and foretell the character of the community to come, are the ones in which the public has the most to gain from the regulation of land development and use, and in which government has the greatest obligation to invoke and apply those regulations which promise the greatest likelihood of achieving the ideals and standards set for the community.

In the landmark decision of this Court in *Village of Euclid* v. *Ambler Realty Company*, 365 S. Ct. 397, 71 L. Ed. 303, 272 U. S. 274 (1926) wherein the validity of a zoning ordinance enacted in the Village of Euclid, Ohio, which denied to the respondent, Ambler Realty Company, the right to use its lands for industrial purposes prohibited in the residential zone in which the lands were included, was challenged on the ground that, because the respondent could sell its land for $10,000 per acre for industrial use but could realize only $2,500 per acre for residential use, it was being deprived of property without due process of law in derogation of the rights it contended were guaranteed under Section 1 of the Fourteenth Amendment, and further that it was denied equal protection by what it contended was the arbitrary imposition of the municipal zoning restriction on its property as distinguished from other properties in the community. The issue was whether or not municipal zoning and the incidental impact of its restrictions on the value and the range of permitted uses of land and buildings could withstand the constitutional test of due process and equal protection. Mr. Justice Sutherland, in articulating the Court's decision upholding the constitutionality of the *Euclid* Ordinance, put the question as whether or not the ordinance violated the constitutional protection to the right of property in the appellee (Ambler) by at-

tempted regulations under the guise of the police power which are unreasonable and confiscatory? (71 L. Ed. 310, 272 U. S. 386). He said:

> "Building zone laws are of modern origin. They began in this country about twenty-five years ago [i.e. about 1900]. Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require and will require additional restrictions in respect to the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions are so apparent that they are now uniformly sustained, a century ago, or even half a century ago would probably have been rejected as arbitrary and oppressive. Such regulations are sustained under the complex conditions of our day for reasons analogous to those which justify the traffic regulations which before the advent of automobiles and rapid transit, street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for while the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted, not to the *meaning* but the application of constitutional principles, statutes and ordinances, which after giving due weight to the new conditions are found clearly not to conform to the

> constitutional, of course, must fall." (Bracketed language inserted by counsel.)

It was argued by the property owner in *Euclid* that the Euclid ordinance was invalid because it excluded not only objectionable industrial uses but all industrial uses. In dealing with this contention, Justice Sutherland said:

> "Here however the exclusion is in general terms of all industrial establishment, and it may thereby happen that not only offensive and dangerous industries will be excluded but those which are neither offensive or dangerous will share the same fate. But this is no more than happens in respect to many practice-forbidding laws which this Court has upheld, although drawn in general terms so as to exclude individual cases that may turn out to be innocuous in themselves."

In sustaining the *Euclid* ordinance, the Supreme Court firmly established the principle that the comprehensive zoning based upon reasonable exercise of the Police power to serve local conditions is constitutional, especially with respect to the due process and equal protection clauses of the Fourteenth Amendment. It determined that the main features of orthodox zoning ordinances: the division of the community into districts, and the restriction in the use of private lands within such districts and the exclusion of certain industrial, commercial, residential and other uses were within the reach of the police power.

Two years after *Euclid*, the Supreme Court, decided the case of *Nectow* v. *City of Cambridge*, 277 U. S. 183, 72 L. Ed. 842, 48 S. Ct. 447 (1928) which dealt with the application of a municipal zoning ordinance which divided Nectow's property so that one small portion thereof was

in a residential zone; and the rest in an industrial zone. Nectow could not feasibly use the one piece for a residence and claimed the ordinance was unconstitutional as to his land. The Court declined to hold that the ordinance was invalid but did say that from the evidence of the case its strict application to Nectow's property would be arbitrary and unreasonable and therefore was not enforceable as to such property.

With the basic problems of due process and equal protection thus resolved in *Euclid* and *Nectow,* municipal zoning was quickly authorized in all of the states and the State Courts, following the guidelines laid down in *Euclid* and *Nectow,* began the long case by case review of problems arising within their jurisdiction dealing with the individual zoning regulations as the same have been developed and applied in local situations. The Supreme Court has heard few zoning cases leaving the matters of local supervision to the administration of the quasi judicial agencies created by the states (in New Jersey Zoning Boards of Adjustments, under the provisions of N.J.S.A. 40:55-36-45 inclusive) and the State Courts. Hence the test of whether or not the provisions of a given zoning ordinance and its application to the local condition under review, is a valid exercise of the police power of the municipality within the framework of New Jersey's zoning enabling legislation, quoted under the first point of this brief, and thus valid under Section 1 of the Fourteenth Amendment as interpreted by *Euclid* and *Nectow,* is the day to day case by case undertaking of the State Courts. The case which the Petitioners urge the Court to review was subjected to just such a test. As Petitioners themselves insist, they raised these very questions and presented factual evidence and legal arguments to the Mansfield Township Board of Adjustment (in two sep-

arate hearings) and the New Jersey Superior Court in a full scale plenary hearing and legal argument. The Court sustained the factual findings of the Board of Adjustment, and the full transcript was reviewed by the Appellate Division of the New Jersey Superior Court which, after such review, and its consideration of the specific legal arguments urged by the Petitioners that the exclusion of Mobile Home Parks from Mansfield Township by the provisions of its zoning ordinance and particularly its application of these same zoning restrictions to the Petitioners' situation exceeded the reasonable exercise of the municipal police power, and therefore violated the due process and equal protection clauses of the Constitution again sustained the factual and legal findings of the Trial Court that the allegedly offensive restriction against Mobile Home Parks in Mansfield Township and particularly in the residential zone where Petitioners' park is located was valid as a justified exercise of the municipal police power, that on the evidence, under settled rules of law, Petitioners' legal non-conforming use was limited to their present 28 space Mobile Home Park. See pertinent language in the opinion of Judge Collins, on Page 13a of Appendix C of Petitioners' Petition.

Moreover, the Board of Adjustment and Judge Collins, as affirmed by the Appellate Division, also found as a fact that Petitioners had failed to sustain their burden of establishing any special reasons which at once would meet the test set forth in N.J.S.A. 40:55-32 *supra,* and also meet the specific condition precedent to the granting of relief to a property owner by way of variance set out in N.J.S.A. 40:55-39, providing:

> "No relief may be granted or action taken under the terms of this Section unless such relief can be granted without substantial detriment to the

> public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance."[2]

As was pointed out by Judge Collins (page 15a of Appendix C of the Petition) in sustaining the findings of fact by the Board of Adjustment:

> "In *Andrews* v. *Ocean Township* [30 N. J. 245, 249 (1959)], the [Supreme] Court [of New Jersey] stated that no definition of 'special reasons' has been attempted and a precise formula is not feasible, therefore each case must turn on its own facts. (material in brackets supplied)
>
> In addition to requiring that 'special reasons' be found for the granting of a variance under N.J.S.A. 40:55-39(d), there must also be a finding that the variance will not substantially impair the intent and purpose of the zone plan and zone ordinance.
>
> This fixed and far reaching restriction represents a requisite in addition to and not substitutionary for the affirmative requirement *Skaf* v. *Zoning Bd.*

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[2] It is interesting to note that this negative criteria is an important part of the legislative procedural requirement to prevent the granting of variances upon a mere showing of hardship of some other "special" reason alone and the consequent erosion of the very uniform regulations which have been ordained to carry out the purposes which justify the regulations as a valid exercise of the police power in the restricting of not only the land of the party seeking relief but his neighbors in the same zone which have relied upon the restrictions to protect their investment in a *permitted use!* In other words, this test is one essential part of our legislation implementing due process and equal protection clauses, part of the whole pattern designed to conform to the classic guidelines set out in *Euclid,* to see that the police power is invoked reasonably and administered uniformly.

of Adj. of Asbury Park, 35 NJ, Sup. 215, 222 (App. Div. 1955); *Schoelppie* v. *Woodbridge Twp.,* 60 NJ Super. 146, 150 (App. Div. 1960).

As to this second criteria the Board found, and the record seems to support its determination, that the granting of this variance would substantially impair the intent and purpose of the zone plan and zoning ordinance.

As to the 'special reason' criteria the only reason given by the plaintiff that is worth mention is that of need of housing. This would not constitute a 'special reason' because since the property can be used for residential purposes the need will be satisfied. The Court does not believe that Mobile Home Parks is the only answer to the housing shortage."

The Court goes on to distinguish the facts in the instant case from those in the case of *DeSimone* v. *Greater Englewood Housing Corp. No. 1,* 56 N. J. 428 (1970) which dealt with a public housing program found to be an answer in a built-up urban community to the need to provide housing for minority or underprivileged segments of its population outside its ghettos.

The trial judge, as noted above, also found the provision of the Mansfield Township ordinance excluding Mobile Home Parks from the Township as a valid exercise of the police power in Mansfield Township and held the ordinance constitutional following *Vickers* v. *Township Committee of Gloucester Township,* 37 NJ 232 (1962), App. dismissed and Cert. Den., 371 U. S. 233 (1963).

It is noteworthy that the Appellate Division of the New Jersey Superior Court in affirming the action of the respondent Board of Adjustment and the Trial Court said:

> "We have studied the record and affirm the judgment under review substantially for the reasons set forth in the opinion of Judge Collins for the Law Division. We are constrained to reach that conclusion in the light of the findings of fact by the trial court, our decisional law adverse to expansions of non-conforming uses and the policy of our State as expressed in *Vickers* v. *Twp. Com. of Gloucester Twp.*, 37 N. J. 232 (1962), appeal dismissed and Cert. Den., 371 U. S. 233 (1963) reversing the decision of this court in that case reported at 68 N. J. Sup. 263 (App. Div. 1961). For a full discussion of the problem see annotation to Mobile Home or Trailer Parks." 42 ALR 3rd 598 (1972).

It is respectfully submitted that in this case the New Jersey Zoning Legislation, the Mansfield Township Zoning Ordinance, the Action of the Mansfield Township Board of Adjustment, the judgments of the Law Division, and the Appellate Division of the New Jersey Superior Court, and the denial of a writ of certiorari by the New Jersey Superior Court, all are well within the guidelines established by this Court long ago in *Euclid, supra* and *Nectow, supra,* and that Petitioners, as the findings of fact case so clearly demonstrate, have not been denied the equal protection of our ordinance or of the enabling legislation, nor have they suffered arbitrary or unreasonable regulation violative of their rights under the due process clause of the Fourteenth Amendment.

It is the performance of our State Courts in the manner here symbolized which has enabled the local governments of our country, since *Euclid* and *Nectow,* to erect a legal institution of land use regulation which has become an integral part of our real estate property law and one of the most useful and constructive tools yet devised to encourage stability of real estate values and to encourage the most appropriate use of land throughout the nation, an institution upon which all of us has come to rely in investing in permitted uses as part of our valid property rights the denial of which are prohibited by the very same Fourteenth Amendment!

One might observe that New Jersey Courts have demonstrated continued alertness to changing conditions and deep concern for the rights of individuals as well as the right of minority and underprivileged segments of our population in all areas.

Analysis of Petitioners' Statement of Reasons for granting the requested writ (Pet. pp. 6-12 inclusive, *passim*) fails to set forth any substantial novel question of national importance or, indeed, any issue upon which this court has not spoken. On Page 7 they protest that "The direct holding of the decision under review is that Mobile Homes may be excluded from Mansfield Township. The more significant impact of the subject decision, however, taken in context with *Vickers, supra,* is that "any and all municipalities in the State of New Jersey may exclude mobile home parks from their boundaries under the guise of reasonable zoning regulation."

It is suggested that petitioners falsely assume that the only places where "Mobile Homes" may be located are

Mobile Home Parks.[3] They contend, too, that no use should be excluded from a municipality which argument would lead to the logical conclusion that every town must permit every use somewhere within its boundaries.

But more importantly, Petitioners concern that the holding in this case will inevitably result in total exclusion of Mobile Home Parks from all municipalities in New Jersey, betrays a fundamental misinterpretation of the *Euclid* doctrine, as well as the long settled policy of New Jersey's own law. They disregard the elementary premise that *each case* and *each ordinance* must be tested as to its constitutionality on the basis of the *local conditions prevailing in the municipality involved,* and the relevance of the ordinance provisions and its application to the promotion of health, morals, or the general welfare of the community; its function in the achievement of a reasonable planned land use pattern; and its conformity with N.J.S.A. 40:55-30 et seq. *supra.* Our local zoning tribunals and our state courts may be depended upon to apply the *Euclid* test as well as any other applicable standard to the circumstances which present themselves in the various communities of the state, just as they did in the case at bar. Indeed, Petitioners themselves acknowledge on Page 10 of the Petition:

> "New Jersey Courts have recognized that Zoning Ordinances containing excessive and unreasonable restrictions designed to discourage or exclude

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[3] It is a matter of common knowledge that the "Mobile Home" industry in recent years has turned to the manufacture of modular "mobile homes" which are essentially prefabricated houses, which are permitted almost anywhere on conventional lots, provided they meet the same standards applicable to so-called conventional homes. Petitioners seem to be limiting the argument to trailers, which indeed are usually confined to Mobile Home Parks.

> the development of certain types of housing accommodations can no longer be tolerated." Citing *Oakwood at Madison, Inc.* v. *Twp. of Madison,* 117 N. J. Super. 11 (Law Div. 1971), 283 A 2d 353; *Southern Bure Cty. NAACP* v. *Twp. of Mt. Laurel,* 119 N. J. Super. 164 (Law Div. 1972); 290 A 2d 465; and *J. D. Const.* v. *Bd. of Adjustment of Twp. of Freehold,* 119 N. J. Super. 140 (Law Div. 1972), 290 A 2d 46. (Decisions were based upon the facts of each of the cases the court struck down certain zoning provisions)."

It would appear that our courts are consistent in applying the classic test laid down so long ago by Mr. Justice Sutherland in *Euclid.* In some cases factual conditions have been found to support the ordinance and the court has sustained the municipality (*Vickers, supra, DeSimone, supra, Fanale, supra*), and in others, by application of the very same tests, the court has found the municipal act wanting in support e.g. *Madison Twp., supra; Mt. Laurel, supra; J. D. Const.* v. *Bd. of Adj. of Freehold, supra.* It seems Petitioners have a propensity to regard as valid exercise of the police power only those cases which on the surface appear to favor their position. Yet unlike many decisions in many other fields, each zoning case historically and by necessity must be treated on its own merits, in its own context, and in no case does it really stand as a binding precedent in the normal use of the term for any other case.

Mr. and Mrs. Yeager have resorted to the very process mandated by *Euclid* and are disappointed in the result. The case is typical of thousands of zoning cases reviewed by our courts throughout the nation every year. There is no new question presented.

In this case our New Jersey Courts have certainly met the judicial burden placed upon them by *Euclid, supra,* and *Nectow, supra,* and once again have demonstrated the wisdom of the historic policy of this Court which may be characterized as (a) a constraint to leave to the States and their local tribunals the review, supervision and regulation of zoning matters in a manner at once consistent with local circumstances and community need, and (b) a consistent restraint from interference with the judgment of local legislators and the findings of Courts in zoning matters, except in the most extreme cases and under the most extreme circumstances. It is submitted that the instant case is not such a case and that Petitioners' request for the issuance of the writ of certiorari to the New Jersey Supreme Court is unjustified.

CONCLUSION

Petitioners have failed to present any novel constitutional issue of substantial national importance. The limitation upon the use of their land results from a valid zoning restriction properly enacted by the Respondent Township Committee, pursuant to the New Jersey State Zoning enabling legislation and under a reasonable exercise of its police power with the constitutional guidelines established by this Court.

WHEREFORE, it is respectfully submitted that the Petitioners' application for a writ of certiorari to the New Jersey Supreme Court should be denied.

Respectfully submitted,

MARTIN BRY-NILDSEN, JR.
27 West Washington Avenue
Washington, New Jersey 07882
Counsel for Respondents

Of Counsel:

HARRY K. SEYBOLT